

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

5 ALONZO AUSTIN,

6 Plaintiff,

7 vs. CASE NO.: 3:07-cv-042-MEF

8 GLOBAL CONNECTION, INC., et al.,

9 Defendants.

\* \*

## HEARING ON SCHEDULING ORDER

^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^ ^

16 APPEARANCES

17 FOR THE PLAINTIFF: Pro se  
18 Mr. Alonzo Austin  
1321 Oliver Carlis Road  
Tuskegee, AL 36083-3739

20 FOR THE DEFENDANT: Mr. Joshua R. McKoon  
MCKOON, THOMAS & MCKOON  
925 Broad Street  
Post Office Box 3220  
21 Phenix City, AL 36868-3220  
22

24                   Proceedings recorded by digital sound recording;  
transcript produced by stenography and computer.

1 (The following proceedings were heard before the Honorable  
2 Terry F. Moorer, United States Magistrate Judge, at Montgomery,  
3 Alabama, on May 24, 2007, commencing at 9:28 a.m.:)

4 THE COURT: Good morning. This is the time the Court has  
5 set to review the scheduling order in this case. For the  
6 plaintiff, who do I have?

7 MR. AUSTIN: Alonzo Austin.

8 THE COURT: And for Global Connection, who do I have?

9 MR. McKOON: Josh McKoon, Your Honor.

10 THE COURT: Joshua Coon?

11 MR. McKOON: Joshua McKoon. M-C-K-O-O-N.

12 THE COURT: Thank you, Mr. McKoon, and Mr. Austin.

13                   Mr. Austin, we're going to go over this scheduling  
14 order. And the reason that I called this hearing in person as  
15 opposed to doing this one over the phone is when I have someone  
16 who is representing themselves, I find it to be beneficial to  
17 everyone concerned, particularly the person who is representing  
18 themselves, for me to explain to them the importance of the  
19 dates that are set out in this order.

Because you are pro se, I assume you have never had formal legal training, Mr. Austin?

22 MR. AUSTIN: That's correct, Your Honor.

23 THE COURT: I appreciate the difficulty that you're  
24 going to have as you go through this process; but because you  
25 are representing yourself, I can't treat you any differently

1 than I would if you were represented by an attorney. It's not  
2 to say that the task that you've got before you is an impossible  
3 one. I'm simply saying that there are some things that if you  
4 had an attorney representing you, you wouldn't have to worry  
5 about in the sense that you would know that certain things need  
6 to be done and when those things have to be done and how to go  
7 about doing those things within the parameters of the law. But  
8 the fact that you are pro se or representing yourself is not  
9 something that I can take into account if there are some  
10 disputes that occur as a result of you doing certain things or  
11 not doing certain things down the road. So you may very well  
12 wish to consider hiring someone to represent you or at least  
13 conferring with an attorney who might be able to guide you  
14 through this process, even though they may not necessarily  
15 represent you. That's a decision you have to make. But I just  
16 want you to understand that when these deadlines are set, they  
17 are not what we would say are aspirational. They need to be  
18 done by the times that -- the things need to be done by the  
19 times set out in the order that I'm going to enter later today.  
20 Do you understand what I'm saying?

21 MR. AUSTIN: I do.

22 THE COURT: All right. The date that the Court intends  
23 to set is -- for predisclosure matters, June the 1st of 2007.  
24 All of the discovery in this case should be completed by  
25 November the 19th of 2007. Any dispositive motions will need to

1 be filed by October the 22nd of 2007.

2 Mr. Austin, the completion of discovery date is  
3 November the 19th of 2007, but there are -- even though November  
4 the 19th is some distance in the future -- and you'll get a  
5 written copy of this -- you need to not think of this in the  
6 sense of, I've got a long time to do it. That's when everything  
7 should be complete. There are things that have to be done  
8 before November the 19th. And so you'll need to be on those  
9 things quite early.

10 The dispositive motion deadline is a very important  
11 deadline because that is the date by which certain motions like  
12 motions for summary judgment or motions for judgment on the  
13 pleadings are due. And those pleadings might dispose of the  
14 case one way or the other. It may decide that you either win or  
15 lose on that date, and you never get to the November the 19th  
16 date. You never get to it, and you don't even get to a trial  
17 date.

18 On November the 5th of 2007, you will have a  
19 requirement to have a face-to-face meeting where you and the  
20 defendant attempt to meet and settle the case. On November the  
21 12th, you shall file a pleading called a notice concerning  
22 settlement conference and mediation. I'll need to know in that  
23 notice -- and this is set out in the order that I'm going to  
24 issue -- whether or not you were able to reach a compromise or  
25 not and whether or not you believe mediation may be useful in

1 trying to resolve this case. I am, as I said, going to issue a  
2 written order with all of this information and more information  
3 set forth in it. You'll have 14 days from the date of this  
4 order, which will be June the 7th, if you decide at the  
5 conclusion of this hearing today that some of these deadlines  
6 need to be moved. So if you don't do anything, these dates will  
7 be set. When it gets time for these things that need to be done  
8 that are set out in this order, then I will expect them to be  
9 done.

10 In discovery, Mr. Austin, there are certain things that  
11 are supposed to be done, and that is where information is  
12 exchanged between the parties. That's expected that that will  
13 occur between the parties. In other words, that will mean that  
14 you'll need to communicate with Mr. McKoon.

15 Now, Mr. McKoon, how long have you been admitted to the  
16 bar?

17 MR. MCKOON: Three years, Your Honor.

18 THE COURT: Okay. Mr. McKoon may have to contact you  
19 directly to ask you for information or to do things called  
20 depositions, schedule depositions, that type of thing.  
21 Likewise, you may have to contact him. The idea is that to the  
22 maximum extent possible, the two of you should try to resolve  
23 any discovery disputes that you might have. That is a  
24 requirement before you file any pleadings saying that you have a  
25 problem, is that you first tried to resolve it among yourselves

1 and could not.

2           In most cases, Mr. Austin, when I've got attorneys  
3 representing each party, they will go through a whole discovery  
4 process, start to finish, and I won't even have any involvement  
5 beyond this point of issuing an order setting out the  
6 deadlines. The two of you can agree among yourselves to do  
7 things differently than what's set out in this order if you  
8 choose to do that; however, in the final analysis, the order  
9 will control.

10           Now, oftentimes attorneys, because they've worked with  
11 each other and have a relationship with each other and are  
12 officers of the court, do decide that a particular day is better  
13 to do something than others, even though the order may require  
14 something to be done by a certain time. But you need to look at  
15 these dates as being very important and that the things that are  
16 required to be done on these dates be done on the dates that are  
17 set out.

18           Is there anything from you, Mr. Austin, as the  
19 plaintiff?

20           MR. AUSTIN: Yes, Your Honor. I would like to thank  
21 you very much for your presentation. I did -- with respect to  
22 this conference scheduling and the report of the meeting, the  
23 26(f) conference, I made an attempt on the 2nd, sent via fax to  
24 Counsel McKoon, and Counsel McKoon did respond via telephone  
25 message. And I had proposed that he and I meet on the 3rd,

1 midway between Tuskegee and Phenix City, where his office is,  
2 and my home, in Opelika at the public library. Upon his  
3 returning my call, he indicated to me that he would not be able  
4 to meet with me either on the 3rd or the 4th. So then he  
5 recommended that we do it via the telephone. I was uneasy with  
6 that because I thought I had read somewhere where normally if  
7 it's within 100 miles, you are to come together and meet. But  
8 he indicated at that time normally attorneys just get together  
9 and do it via the telephone. So I consented, okay, and so we  
10 began to set out with that process.

11 Now, it did not happen over the telephone because we  
12 were just unable to complete the process. I was left  
13 frustrated. But he did inform me that he was going to e-mail  
14 electronically, okay, our meeting via the telephone and what we  
15 discussed, and he also informed me that he would send me a fax.  
16 To this day, I don't have the fax. And I'm just -- I want to  
17 apologize to the Court for that, because I was unable to get  
18 officer -- or Counselman McKoon to agree to a meeting place.

19 THE COURT: Well, Mr. Austin, this is, again, one of  
20 those things -- you indicated that you're frustrated. These are  
21 the kinds of frustrations that a person represented by an  
22 attorney doesn't have to undergo. Attorneys are in a business  
23 like other businesses, and they understand how things go,  
24 whereas you as a layman don't necessarily understand how these  
25 things work. Mr. Austin, normally attorneys, when they are

1 trying to resolve matters related to discovery, do a good deal  
2 of their work over the telephone, especially where it's routine  
3 things such as trying to get dates on calendars set up and that  
4 type of thing. Even Rule 26(f) meetings oftentimes take place  
5 via telephone where they talk among each other. So all the more  
6 reason you may wish to reconsider whether you want to represent  
7 yourself, Mr. Austin, or get someone else. That decision is  
8 purely up to you. But as I said earlier, it is oftentimes  
9 easier for the litigants to work through their attorneys because  
10 they know how things go and they know how to get things done  
11 with as little friction as possible.

12 Now, if you have some objections to what has happened  
13 to this point and if you feel that there is something that you  
14 need the Court's intervention to do, then you'll need to file a  
15 motion. And here again, I won't be able to represent you in the  
16 course of this matter. There may be things that Mr. McKoon does  
17 or doesn't do that -- that you might have some means by which  
18 you can get him to do what you want him to do. You as a layman  
19 may not know that. And I'm not saying that Mr. McKoon is going  
20 to take advantage of you, but Mr. McKoon is in this case because  
21 he's got a duty to represent Global Connection to the best of  
22 his ability and within the rules. And so you won't be able to  
23 depend upon Mr. McKoon to help you out so to speak. I think  
24 Mr. McKoon will probably cooperate with you within the realm of  
25 decency and cooperation, as he would with any other litigant,

1 but in the final analysis he's got to do what he thinks is best  
2 for Global Connection, which is not in your best interests.

3 I won't be able to help you. You may wish to seriously  
4 reconsider your decision to represent yourself. Issues that  
5 you've had just -- you've told me just now are the kind of  
6 things that lawyers know whether or not that's something they  
7 need to file a motion about or not. I can't advise you to file  
8 a motion or not. I can't advise you what to do. I can only  
9 tell you, this is the schedule we've got right now, and as this  
10 thing goes along, you're going to have other issues that  
11 probably crop up. Even when lawyers are representing each  
12 party, there are things where reasonable minds and reasonable  
13 attorneys can differ about it, and they sometimes have to ask me  
14 to get involved and to decide it, and I do the best I can, and  
15 then they go on their way. There's going to be things that  
16 happen in the course of this case that you're going to have to  
17 rely upon yourself as long as you represent yourself to resolve,  
18 and it may put you at a disadvantage. There's nothing I can do  
19 about that.

20 Is there anything further from you, Mr. Austin?

21 MR. AUSTIN: Just one more thing, Judge. With respect  
22 to the Court's conflict disclosure statement, I received the  
23 order in the mail, and it made it quite clear that Officer  
24 McKoon only had ten days. And it also makes it clear that I  
25 should receive a copy via certificate of service. And so it's

1 just continuing, continuing. I have yet to receive a copy of  
2 anything via certificate of service from the defendant's  
3 attorney.

4 THE COURT: Well --

5 MR. AUSTIN: And I always served him.

6 THE COURT: Mr. Austin, this is one matter, though,  
7 that I can help you with. The corporate disclosure reporting  
8 process exists, really, for the benefit of the Court and the  
9 benefit of the parties. When they file whatever they put into  
10 their corporate disclosure reports, it's so that the judges can  
11 see whether or not they have any financial interest in a case.

12 MR. AUSTIN: Yes, sir.

13 THE COURT: And if a judge has a penny's worth of a  
14 financial interest in a case, then a judge has to excuse  
15 themselves from the case. And not only does it extend to the  
16 judge, it also extends to family members of the judges. And I  
17 say that to say I can put your mind at ease. I don't own any  
18 stock, my wife owns no stock, my children own no stock.  
19 Regardless of who owns Global Connection, there is no conflict  
20 as far as me with Global Connection. I don't know you. I have  
21 no financial interest that I am aware of with you. So they  
22 filed their corporate disclosure statement today, but as far as  
23 I am concerned, there's not going to be anything that they can  
24 show that's going to be a financial conflict. And to my  
25 knowledge, I have not laid eyes on Mr. McKoon before we came

1 into court today or you.

2 MR. AUSTIN: Yes, sir. And the only thing that I'm  
3 really hoping for is that the certificate of service with  
4 respect to whatever his position is in this court, that I be  
5 served.

6 THE COURT: Well, you have Mr. McKoon's address,  
7 correct?

8 MR. AUSTIN: I do.

9 THE COURT: And Mr. McKoon has your address?

10 MR. AUSTIN: Correct.

11 THE COURT: And you have his phone number and he has  
12 your phone number?

13 MR. AUSTIN: Correct.

14 THE COURT: He has your e-mail address?

15 MR. AUSTIN: I don't have an e-mail, but he has a fax.

16 THE COURT: Okay. And he has an e-mail address that  
17 you have?

18 MR. AUSTIN: I just have the fax number because I don't  
19 have an e-mail --

20 THE COURT: No. I'm saying, Mr. McKoon has an e-mail  
21 address?

22 MR. AUSTIN: I don't know.

23 MR. MCKOON: I do, Your Honor.

24 THE COURT: Okay. Well, if you will give him that,  
25 then if, for whatever reason, you end up not receiving service

1 of something that you feel that you're entitled to receive, then  
2 it will be up to you as your own attorney to bring that to the  
3 Court's attention by way of the appropriate motion.

4 MR. AUSTIN: Okay. Fair enough. Thank you, sir.

5 THE COURT: Okay. Is that all from you, Mr. Austin?

6 MR. AUSTIN: Thank you.

7 THE COURT: Is there anything further from you,  
8 Mr. McKoon?

9 MR. McKOON: No, Your Honor. We've had an opportunity  
10 to review the proposed scheduling order. We don't have any  
11 objection. I would only say, as to the service issue, I did  
12 serve Mr. Austin this morning just by hand delivery the  
13 corporate conflict statement, and it's my intention going  
14 forward, just to make sure there are no further service issues,  
15 simply to serve anything that's required by certified mail so  
16 there's no question that it's been served and that he's received  
17 it.

18 THE COURT: Yes, Mr. Austin?

19 MR. AUSTIN: He just made a statement, and I think I  
20 need to clarify one thing with respect to the discovery. There  
21 is some information that I didn't -- that he and I did not  
22 discuss that I would like to amend to make absolutely sure that  
23 what's on there, same thing he and I have on there. For  
24 example, I was not aware of -- you're Global Connection. That's  
25 who I filed against. But the other subsidiaries and

1 associations I was not aware of. So he just now handed me  
2 this. But when I look at my discovery, I realize that I would  
3 like to add the defendant's tax returns for 2004, 2005, and 2006  
4 in the discovery portion.

5 THE COURT: Well, Mr. Austin, you're free to file any  
6 motions you feel necessary. But like I said, initially you're  
7 expected to deal with Mr. McKoon either face to face or by  
8 telephone or by letter to try to resolve whatever you feel that  
9 you still are owed before you file motions with the Court.  
10 Okay? The case isn't decided today. Today all we're doing is  
11 we're setting out the schedule. And you're now at the gates,  
12 and once I enter this order, the race will be on. Okay? All  
13 right. If there's nothing further, this matter will be...

14 (Tape cut off)

15 (Proceedings concluded at 9:50 a.m.)

16 \* \* \* \* \*

17 COURT REPORTER'S CERTIFICATE

18 I certify that the foregoing is a correct transcript  
19 to the best of my ability from the official sound recording of  
20 the proceedings in the above-entitled matter.

21 This 19th day of May, 2008.

22

23

/s/ Patricia G. Starkie  
Registered Diplomate Reporter  
Certified Realtime Reporter  
Official Court Reporter

24

25